

REMARKS

Upon entry of the foregoing amendment, claims 1, 3, 4, 6-8 and 11-19 are pending in this application. Claim 19 is newly added. Claims 2, 5, 9 and 10 have previously been canceled. Claims 4, 6-8 and 18 have been withdrawn from consideration as being directed to a non-elected invention. Claims 1, 3 and 19 are currently under examination.

Support for the amendments to claims 1, 15 and 16 (claims 15 and 16 are currently withdrawn) changing “mass” to “weight” are found, for example, on page 1, line 29; and, elsewhere throughout the specification. “kDa” is well known as an abbreviation for “kilodaltons,” and is a measure of molecular weight. Therefore, it is believed that the change from “mass” to “weight” is also implicitly supported by the use of “kDa” in the specification.

New claim 19 finds support in claims 2-3 and elsewhere throughout the specification.

It is believed no new matter has been added has been introduced by this amendment and entry is respectfully requested.

Restriction

The Office has made the requirement for restriction FINAL. The restriction requirement is respectfully traversed.

In reply to the previous restriction requirement, Applicants elected Group I, claims 1-3, drawn to a peptide and asserted Groups II, III and IV should be joined and examined with the claims of

Group I in view of the presence of the single general inventive concept. However, the Office has maintained the restriction requirement, asserting the analysis of novelty is based on the claims as originally presented. The Office continues to assert the inventions listed as Groups I-IV do not relate to a single inventive concept under PCT Rule 13.1 because under PCT Rule 13.2, the groups lack the same or corresponding special technical features.

Applicants assert that while each of the identified protein sequences has a different structure, the identified protein sequence SEQ ID NO: 5 is an embodiment of the genus of sequences included in claim 1. The elected species (SEQ ID NO: 6) is representative of the genus of the claim and the genus should be allowed or at least the additional species, representative of the genus, i.e., SEQ ID NO. 7, should be searched. The Office is reminded that if a generic claim is found to be allowable, the method claims should be rejoined and allowed as well. Therefore, the method claims, although currently withdrawn from examination, have been amended where necessary to conform to the 35 U.S.C. § 112, second paragraph, comments made by the Examiner regarding claims 1-3.

Objections to the specification

The Office has objected to the embedded hyperlinks. Accordingly, the specification has been amended to delete the link.

Use of Trademarks

The comments concerning the use of trademarks at page 3 of the Office Action are noted. Applicants do not believe the use of any term in the specification is improper.

Rejection of claims 1 and 3 under 35 U.S.C. § 112, second paragraph

Claims 1 and 3 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The rejection is respectfully traversed.

The Office asserts the recitation of “molecular mass” is vague and indefinite. However, without acquiescing to the position of the Office, claim 1 (and withdrawn claims 15 and 16) have been amended to change the “mass” to “weight” as discussed above. In view of the amendments to the claims, the rejection is believed to be overcome. Reconsideration and withdrawal of the rejection is respectfully requested.

The Office also asserts the word “approximately” is vague and indefinite. However, contrary to the position of the Office, the word “approximately” is understood by one of ordinary skill in the art and is given its ordinary, common English language meaning. “Approximately” is defined in The American Heritage Dictionary (Second college Edition, Houghton Mifflin Company, New York and Boston, 1991, page 122) as “(3) Close together; near.” or (2) “Very similar; closely resembling.” Roget’s Thesaurus (Roget’s II, The New Thesaurus, 3rd edition, Houghton Mifflin Company, New York and Boston, 1995, page 47) defines “approximately” as meaning “Near to in quantity or amount: about, almost, nearly, roughly.” Therefore, one of ordinary skill in the art would understand the meaning of the word “approximately.” In addition, the meaning of the word “approximately” has been considered by the Federal Circuit. In *Quantum Corp. V. Rodime, Plc.*, 65 F. 3d. 1577, 36 USPQ2d 1162 (Fed. Cir. 1995), cert. denied, 517 U.S. 1167 (1996), the court determined the word “approximately” meant ‘reasonably close to’. Thus, in the instant application, one of ordinary skill would interpret “approximately” as ‘reasonably close to.’ Applicants assert the word “approximately” is not vague and indefinite since one of ordinary skill would understand, for example, the phrase “a molecular weight of approximately 4.5 kDa” to refer to a molecular weight which is reasonably close to 4.5 kDa. Reconsideration and withdrawal of the rejection is respectfully requested.

Rejection of claims 1 and 3 under 35 U.S.C. § 102(a)

Claims 1 and 3 have been rejected under 35 U.S.C. § 102(a) as being anticipated by Mitta *et al.* (J. Cell. Science 113: 2759-279, 2000) and by Mitta *et al.* (Developmental and Comparative Immunology, 24;S1:S20, Meeting Abstract, July 3-6, 2000). Both rejections are respectfully traversed.

The Office asserts Applicants cannot rely upon the foreign priority papers to overcome either 102(a) rejection because a certified copy of the English language translation of FRANCE 99/08858 has not been made of record in accordance with 37 CFR § 1.55. In reply, submitted herewith is a certified copy of the English language translation of the priority document. This application is entitled to a priority date based on the filing date of the priority document (July 8, 1999). Therefore, both Mitta documents, having publication dates (2000) subsequent to the effective filing date of this application (1999), are not proper prior art. The submission of the certified copy of the English language translation of the priority document is believed to moot both rejections. Reconsideration and withdrawal of the rejections is respectfully requested.

Conclusion

The foregoing amendments and remarks are being made to place the application in condition for allowance. Applicants respectfully request reconsideration and the timely allowance of the pending claims. A favorable action is awaited. Should the Examiner find that an interview would be helpful to further prosecution of this application, the Examiner is invited to telephone the undersigned at his convenience.

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of times fees, or credit any overpayment to Deposit Account 50-0310. This

paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME**
in accordance with 37 C.F.R. § 1.136(a)(3).

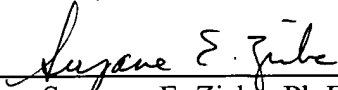
Attachment:

Certified copy of the English language
translation of the priority document FRANCE 99/08858

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

By: _____


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